

This paper delivered at an E.G.M. held in August 1992¹

Recently we won a 'major victory' for one of our members, a woman who died of mesothelioma, a schoolteacher.² Her husband is also a member. But it was a very important victory because it means any worker who becomes an asbestos victim, even a white collar worker, now has a way to beat the DSS; it doesn't mean it'll be easy but at least we've shown the door is there to be chapped (kicked down). All it takes is time and effort, some knowledge about the issue, and the will to fight which is very important. We have to say we were disappointed that we didn't receive any real backing from the teachers' unions.

But we shouldn't kid ourselves on, a victory like that is very unusual. Even as we speak the DSS are still looking for ways of appealing on that decision to try and get it reversed. We're confident they won't succeed but you can never tell. Sometimes you feel that the DSS give us occasional victories just to string us along. They've shown time after time they can put the block on any victim more or less as they like. Everybody that comes into the office to fill up a form is a victim of asbestos. We know it and they know it, and so do the medical authorities, but still they deny diagnosis, the doctors won't even tell people what diseases they've got.

What we are talking about here is that people are catching incurable diseases and not getting proper treatment and care; and when the diseases are industrial victims are not getting their proper benefits, they're forced to spend their time fighting to get their welfare rights instead of being allowed to cope with the mental torture of having a disease which is incurable and which they know they'll die from sooner or later. And even when they die of mesothelioma and the doctor admits they died of mesothelioma, even then the DSS still has it in its power to stop the widow getting the posthumous benefits. The doctors say the victim died of something else altogether. In fact what the DSS does is exactly the same as what the asbestos-industry has been doing for 60 years.

Remember that these benefits and allowances are rights, they're not favours,

¹ During the delivery of this one of our members was taken ill suddenly, collapsed and died

² See the case of "Helen Rankine"

they're rights. This government is duty-bound to give them to any victim of industrial disease.

And let's be clear that in 99 cases out of a 100 the employers knew about the dangers. That's why they always admit liability. They knew they were putting people to work in conditions that would prove detrimental to their health, that might even kill them. And so did the government. They've known for nearly a hundred years but they've allowed these employers to get away with it by not enforcing their own health and safety regulations. The employers knew they could get away with it. And they did get away with it. And in far too many cases they're still getting away with it. And the government is still not doing anything about it. Instead of attacking the guilty people the government attacks the victims, instead of making the employers pay for their crimes the government pays lip-service to the plight of the victims and dishes out a few benefits and allowances for their disablement. And the disablement we're talking about is lung death.

The government acts the part of an insurance company for the employers. And what a great deal for they get! They don't even pay a premium! Who pays the premium? The workers pay the premium. The victims! The worker pays the insurance and the government gives them it back to make up for the fact that their employer has poisoned them! What kind of mad logic is this at all? What we're talking about here is like a murder victim having to pay compensation for the fact that he's being murdered, and then the murderer gets off scot free! You work it out.

And even then, 90 times out of 100 the government do everything they can to stop paying the benefits and allowances, they try and skin the victims out of every last penny. And the DSS medical authorities at Corunna House and Blythswood House do exactly the same as all these doctors that act for the Defenders in any civil action claim, they do everything in their power to deny diagnosis, to stop the victim getting his or rights under the law.

That's what's happening. That's the con trick they're operating. They've been getting away with it for 100 years and they're still getting away with it.

You'll see here how fighting the DSS is just like fighting the Defenders in a civil action claim. The government is the insurers and the Defenders are the same Defenders as usual, the employers and the asbestos industry. And the way it's all set up relates to financial compensation. As a victim you don't get justice, all you get's the

promise of disability benefit. And the killers go free. And there's no way of bringing them to pay for their crimes.

In Glasgow a few weeks ago asbestos was removed from a school in Drumchapel and we discovered asbestos littering the playground (myself and Bert Connor were there in person and saw the on-the-spot video filmed by Tommy Reilly). These people we're talking about don't care if they contaminate the playground and kill children. They don't care. Because there's no comeback. This particular firm has already been fined but they're still doing it and still getting away with it and they're still being employed by Strathclyde Regional Council.

We know about asbestos in schools and public buildings and we know that the children and ordinary public are at great risk, if any of them are unfortunate enough to catch one of these terrible diseases they'll be left to die without having any sort of claim against the company that killed them. And they won't get any state benefits because the government, the DSS, will not classify it as industrial disease. So the victims will fail the so-called prescription test, the same test they tried to fail the woman schoolteacher.

In Australia we have reports of children dying of mesothelioma. How soon before we hear about that in this country. Maybe it's happening already and we don't know about it because of the propaganda or because the doctors are denying diagnosis. The way our government operates and the way the medical authorities operate they'll force these kids to prove what disease they're dying from.

The burden of proof is always on the victim. You're guilty until you've proved yourself innocent. And that means you're forced to run the gauntlet, they line you up against a battery of medical experts who always start out by denying you have it. They put you down as anything from bronchitis to emphysema, to asthma, or budgie and canary disease, or lung cancer caught by smoking; c o d - anything at all except the truth, that you've got an asbestos disease. Because of the physical and mental stress caused to victims many of them die in the process of trying to give the authorities the proof they're looking for. And that's before we even start talking about biopsies.

The problem is that you get so busy caught up in your own struggles to get your benefits and your compensation that you don't have time for what the real issue is. You don't even remember what the real issue is. You forget all about what the real issue is.

What is the real issue. Pat McCrystal summed it up in his fight with the legal

profession. Pat McCrystal told his lawyers and anybody else that would listen, he told them and he kept on telling them, I'm not interested in your money, I'm not interested in your financial compensation. What is it you want? that's what they asked him. Name your price?

There is no price, is what Pat told them: no price.

How can you put a figure on somebody's life. Pat McCrystal talked about justice. And what happened when he talked about justice. What did the legal profession do, the lawyers and the QC? Nothing. They just looked at him. They didn't even know what he was talking about. Then they told him justice is not really what his case was about. His case was about money, it was about financial compensation. That's what every last case is about. That's what the law's about. Money. It's got nothing to do with justice as we might understand it. If you want justice go to parliament, that's what they told Pat McCrystal.

The law is about levels of compensation and it's about financial deals and negotiations, it's about bartering and it's about the market place. And when Pat was standing in the hall of the court of session that's what he was standing in, the market place. And the legal profession were the money dealers, going back and forward tipping each other the winks and the nods, five grand here and five grand there and making each other offers they couldn't refuse.

But justice is not money or compensation. That's not what it's about. And Clydeside Action is not just about money and it's not just about compensation. Obviously that comes into it. We don't have any choice on that. But Clydeside Action is also about justice. Justice, above all, is what it's about. And if it's not about justice then it's not about anything and we'd be as well shutting up the doors for good.

And speaking personally this to me has been a problem for a long time - like it's been a major problem in the official trades union movement - we're always talking about cash settlements and financial compensation: we've forgotten about justice. Maybe that's why we've fallen into the trap of spending so much time and effort and energy on trying to win these individual DSS welfare rights' claims and civil action claims. Like the trades union movement we've fallen for the scam on compensation whether it's an extra half a quid an hour dirty money or whether it's an out-of-court settlement to compensate for the fact that your employer has knowingly and wilfully killed you by giving you a poisonous and fatal deadly fibre like asbestos.

The government and the asbestos-industry, the big employers and their insurers have always been happy and always will be happy to let us think the fight's about money. Name your price. That's what they'll say, like they've said to who knows who many thousands of asbestos victims. Name your price. It's like a guy coming up to you and saying: Okay I admit it, now you've found me out, I have been murdering thousands of people for years and now I hate to give you the bad news, but you're one of them the unlucky ones, I've murdered you as well. And by the way, did your wife wash your overalls? maybe I've murdered her as well, what about your kids, did you wash your hands before you played with them? How much dough can I offer you to square the account? (But dont ask for too much otherwise I'll fight you to the last breath in your body.)

How much cash do you want. A murderer is saying, how much cash do you want? And no matter what happens they're never going to face trial, their guilt's never going to be made public. It's just a bribe. That's essentially all it is, nothing more nothing less - well, maybe something less

And that's how they've beat the victims for the past hundred years and that's how they're still beating them. And they'll go on beating them until we all remember what the fight is and we remember that justice is not the same thing as money.

If you're feeling cynical you might want to say the history of health and safety within the official trade union movement is a history of bribery, of financial settlements - all done out-of-court. And where you get these deals you always get corruption, the one follows the other. Clydeside Action has been accused of being anti-trade union. The very opposite is true. Every single person who ever enters the office is committed to the trade union movement. Nearly every single member of the voluntary workers has been an activist. But some union officials just cant take criticism; they're presumptuous enough to think that criticism of them means criticism of the trade union movement.

In fact the very reason that these individuals get criticised is because they've failed the movement and they've shamed the movement and they're still failing the movement and they're still shaming the movement, because of their inability, because of their cowardice, their laziness, because they won't take on the fight.

When we talk about justice we're talking about bringing killers into court, getting their names known to the public; letting the public see what's been going on and

what's still going on, showing them about the wrongful diagnosis and the misdiagnosis and the denial of diagnosis and the shameful and inhuman way asbestos victims are getting victimised in this society.

There's a famous quotation known to anybody who's ever read *BLUE MURDER*, it comes from the first lawyer in Australia who got committed to the struggle and he made it when he was first taken to meet a group of exworkers from Wittenoom in Western Australia. It dawned on him here he was sitting in the same room as somebody with mesothelioma, somebody with asbestosis, somebody with lung cancer and so on: I quote directly and make no apologies for the language the lawyer used; he was upset and he was angry and he said: "What the fuck's going on, here's a roomful of people dying and nobody's doing anything about it!"

Like Pat McCrystal we argue that every single victim must fight to get into court at all costs. It's very important to grasp this point because the legal profession and the medical profession and some officials of the trades union movement either can't grasp it or else think it's irrelevant to the issue. It's not because victims want to give their own evidence about the injustice. We know about closed evidence and all that sort of stuff. We're not talking about that. These employers are admitting liability already so we don't have anything to prove at that point. They're already saying they're guilty. But the con is that that's what their get-out is. To admit their guilt is a big assist in helping them get them off scot free.

But what we're looking for is what's already happened in other parts of the world, in Australia and in the USA. We're looking for a ruling from the judge. That's what we want, we want judges forced to make rulings in court about the gross negligence and the reckless and irresponsible and downright wilful behaviour of the asbestos industry and all these employers who have poisoned so many human beings and who have killed so many human beings.

Like the lawyers keep telling us, compensation figures don't get plucked out of a hat, there's a strictly controlled way of calculating the sums of money; for the victims it's degrading and humiliating but the victims don't have any say in the matters, it's the law and the law can't be tampered with. So they tell us anyway. They speak like it was laid down by God. They forget the law was made by people and can be changed by people. That's what the bill about the *Effect of Death on Damages* is all about.

Anyway, the one unpredictable factor in the compensation process is what in

America they call Punitive Damages. In Britain they call it Exemplary Damages. Punitive Damages were first awarded against Johns Manville in 1981. Then in Australia in 1988. Some of you might have heard about the Baltimore Judgment made a couple of months ago. The OILC carried word of it in the latest issue of BLOW OUT. Punitive damages are awarded where "a company has acted in an utterly outrageous manner." A judge ruled in-court and condemned Johns Manville etc., and exacted punitive damages against them.

To support a conviction of murder the law [right here in Scotland might be] broad enough to encompass death arising from acts or omissions of any employer who possesses the knowledge or belief that death or grievous bodily harm would probably result. To support a conviction for murder we don't have to prove that the employer wants to cause the worker's death; we only have to show that the probability of the worker's death is foreseen by the employer and that the death is caused by the "employer's acts or omissions." Criminal law for corporate murder or manslaughter. These are the types of issues we should be talking about instead of how much money we'll take for letting them get away with it. As far as we can see the first step is to use civil law to start the process moving, start getting cases into court so the judges are forced to start making rulings on the culpable and criminal guilt of these employers. But maybe there are better ways.

The days of out-of-court financial deals has got to stop. The trades union movement can't afford to be a part of it any longer. Justice, justice for the living and safeguard the future.

Thanks for listening.

quote from the young Aussie lawyer who made the big breakthrough, when first taken to W. A. to experience what was going on, being pointed out here a mesothelioma victim, there an asbestosis, here a cancer etc: "What the fuck's going on, here's a roomful of people dying and nobody's doing anything about it"

1981 saw

"the judgment Manville had been dreading...first award of punitive damages. "The sting of the shilling," as it's called here in UK and Australia known as exemplary damages, but essentially the same thing. Awarded when a company has acted in an utterly outrageous manner. Manville (1981) condemned for acting with "reckless disregard for human life" - ordinary damages of \$1,250,000 and punitive damages of \$759,000...the beginning of the end for Manville. 1982 its insurance company backing out of liability writs in USA @ 500 per month. [New Jersey, former heartland of every noxious industry, from petrochemicals to steel-making; the centre of the cancer map of the USA; barbers, barmen and housewives all dead of mesothelioma here] Manville filed for bankruptcy 1982.

State can't cope with the enormity of the asbestos disaster

Def. argument: how could they know about mesothelioma when the studies weren't done until 1960?

answer: asbestosis and other cancers linked to asbestos exposure since 1930's "of class, type or character" to mesothelioma.

20% (loss of function) lung dead

Early ruling against Wally Simpson: condition due to: 'bronchitis caused by smoking; LFT affected by overweight; suggestive of a person inclined to exaggerate symptoms, personality disorder, not physiological...' (1987)

32 May 1988 ruling in Victoria for Klaus Rabenault (52 at the time), mesothelioma: \$426,000 compensation and \$250,000 punitive damages; first time in Australia that any judge or jury had found a company so recklessly indifferent to the safety of its workers

ruling in other case (of CSR subsidiary) and in West Australia:

"the board of ABA should, in 1943, have caused inquiries to be made about asbestos related dangers. It may be thought presumptuous at this distance to assess the duty of an employer some 40-odd years ago. I find it impossible, however, to believe that standards have changed to the extent that an industrialist would not be obliged to find out all there was to know about the properties of a mineral which he intends to mine and mill, and to find out the industrial dangers of such an enterprise...ABA should have foreseen a risk of asbestosis...(and) should have foreseen a risk of lung cancer...it is almost inconceivable that at least the oral warnings of Dr Saint were not sent back to (CSR) in Sydney." Justice Barry Rowland.

And from him again, to the employer's representative; employer arguing that '700 particles per cubic centimetre was safe level when the for years before this the asbestos industry around the world was operating on standards a quarter this level':

"I find that equipment and techniques existed at relevant times that could (have) enabled ABA to contain and control dust to limits which were then acceptable; but (the company) failed to utilise equipment and techniques available, and failed to achieve an acceptable limit".

Employers had known dust levels 'excessive' no attempt to warn workers' 'attempts to improve ventilation too little too late' 'should have known dangers of asbestosis (in 1943) and of lung cancer (after 1949). But Rowland ruled against punitive damages -

CSR's actions 'not flagrant or reckless enough to warrant the award'.

On the appeal against punitive damages in earlier case ruling, by three Victoria judges, in favour of claimant/pursuer/plaintiff that "a strong case supporting the finding of recklessness ...indeed of continuing, conscious and contumelious disregard by the defendant for the plaintiff's right to be free from risking injury or disease..." (sept 1988)(d o d 4/89)

Reaction from the insurers, 'all bets off... "it is apparent from yesterday's court decision...that Midalco had been aware of the dangers associated with asbestos dust, that it had failed to fully disclose the dangerous nature of the Wittenoom mine operations to the Insurance Commission...the insurance policy for Midalco is considered to be inoperative."

CSR (ABA Midalco) supplied blue asbestos all over the world, including the UK who was one of the biggest importers; CSR has contaminated shipyard and other workers throughout this country. In the USA hundreds actions have been filed against them.

extract from "submission on industrial law enforcement for the Victorian Government (basically the same criminal law generally though some operate on so-called common law and others have statute law for homicide":

A number of commentators have argued that a fatality arising from an employer's gross disregard for the health and safety of employees merits the creation of a new offence of industrial homicide. ...the law of Victoria, as it currently stands, would readily support the framing of charges for manslaughter and, in the most extreme cases, for murder.

Although murder is commonly understood to mean intentional killing, the existing law of murder in Victoria is sufficiently broad to encompass death arising from acts or omissions of an employer who possesses the knowledge or belief that death or grievous bodily harm would probably result. To support a conviction for murder, it is not necessary to prove that the employer had sought to cause the employee's death - indeed, the employer may well have desired that death not occur. What is required is that the probability of the

employee's death be foreseen by the employer, and that the death be caused by the employer's acts or omissions.

When the Victorian Government begins to bite the bullet on a major high-profile case against a recalcitrant company ...it will be making a start to signifying the new governmental and public perception of the seriousness of occupational health and safety crimes. To have a criminal law, with its enormous symbolic, educative and moralising potential for creating a new sense of managerial and corporate conscience, and not use that potential, would be remiss."

"Acts or omissions, gross disregard for the workers' safety, the foreseeability of death...are the issues at the core of" claims against CSR "whose guilt has been spelt out on all counts..." 'continuing, conscious and contumelous' disregard for workers' safety'.

Victoria's Law Reform Commissioner has stated from what he knows of the Wittenoom case a charge of "murder would be more appropriate than manslaughter"

"Only impediment is 'one year and a day rule' which dates back to 17th century England, where common rather than statute law operates, a murder charge cannot be brought if the victim dies more than 366 days after attack"